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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 167

ST. PAUL AT CHASE CORPORATION,
A MARYLAND CORPORATION,
Petitioner,

v.

MANUFACTURERS LIFE INSURANCE COMPANY
OF TORONTO,
A CANADIAN CORPORATION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF MARYLAND

PETITIONER'S REPLY TO BRIEF FOR RESPONDENT IN OPPOSITION

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INTRODUCTION

On August 4, 1971, St. Paul at Chase Corporation (St. Paul), filed a Petition for a Writ of Certiorari to the Court of Appeals of Maryland.

On August 31, 1971, Manufacturers Life Insurance Company of Toronto (Manufacturers) filed a Brief for Respondent in Opposition.

ST. PAUL'S ANSWERS TO THE ISSUES RAISED BY MANUFACTURERS

Jurisdiction

Here Respondent was correct. Inadvertently Petitioner cited 28 U.S.C. Sec. 1254, instead of the correct Sec. 1257. This obvious error has been corrected by interlineation.

Statement

Respondent stated:

> "St. Paul, not satisfied with the Maryland Court of Appeals' interpretation of the Maryland Law of damages consequent to breach of contract, has petitioned this Court, apparently in the belief that this Court will construe Maryland Law in a manner which will enlarge St. Paul's award."

By a footnote, Respondent stated that under the awards of consequential damages made by the court below, Petitioner was actually placed "in a far better financial position than Petitioner would have been in had Respondent fully performed."

Your Petitioner takes exception to both of the above statements as not being conducive to the facts.

Petitioner has not requested this Court to construe Maryland Law. Petitioner has contended that the opinion of the court below relative to the measure of damages in a breach of contract action was in error and was contrary to established General Law, and that it is a proper one for review of this Court under Rule 19 of the Rules of the Supreme Court of the United States (adopted June 15, 1970, effective July 1, 1970) which reads as follows:

> "1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important

reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision."

Your Petitioner respectfully submits that the question raised by them involves a Federal question of substance and of national importance which has not been previously determined by this Court and which should be settled by this Court. Your Petitioner further submits that not only is the opinion of the court below in direct conflict with established General Law stemming from *Hadley v. Baxendale*, 1854, 9 Exch. 341 (Eng.), but is in direct conflict with the rule laid down by the Supreme Court of California in *Reichert v. General Insurance Co.*, 1967, 428 P. 2d 860 vac. on other grounds, 1968, 442 P. 2d 377. In that case the Fire Insurance Co. (General) refused to make payment for an insured loss, which loss forced the plaintiff into bank-

ruptcy. The court held that the company under its policy would have been liable only for the amount of the fire loss, but having ~~reached~~ breached its ~~east~~ contract it was liable for the full value of the property at the time the contract was made, which was considerably more than the amount of the loss.

It can hardly be seriously contended that your Petitioner was placed "in a far better financial position than Petitioner would have been in had Respondent fully performed". By the opinion of the court below, St. Paul was only awarded monies to enable it to pay certain creditors. As noted in the opinion, the award did not even cover all creditors. Furthermore, not one cent was awarded to St. Paul to compensate it for the loss of its 22 story, 238 unit apartment building, wrongfully caused, as found and held by the court below, by Manufacturers' breach of contract, which building at the time the contract was made was valued by Manufacturers at $7,920,000. This was the value of the contract that was in the contemplation of the parties at the time the contract was made.

PETITIONER'S ANSWERS TO RESPONDENT'S ARGUMENTS

I. Respondent contended there is no Federal question present in the record of the case. That there is a Federal question is readily apparent. The Court is not requested to review a decision dealing with local (state) substitutive law. The law the Court is requested to review is the law dealing with breach of contract laid down in *Hadley v. Baxendale, supra,* which has been adopted by nearly all of the states of the country and by all text writers as being the very foundation of all cases dealing with breach of contract. A ruling by a state court that completely contravenes the rule of *Hadley v. Baxendale, supra,* and renders it meaning-

less, is a ruling of Federal and national importance, a review of which is provided for under Rule 19 of the Rules of the Supreme Court of the United States given above. If such a ruling is not reviewed and reversed by this Court, it could throw the entire mortgage industry of the country into utter chaos. Under the ruling of the court below, in times of escalating interest rates and in times of a depression, or even temporary market recession, any mortgagee could breach its mortgage commitment with impunity. Such a ruling if allowed to stand would seriously and adversely affect the flow of capital into the construction and development industry so vital to the economy of the country.

II. Respondent's statement that Petitioner's attempt to raise a Federal question was not timely and that Petitioner after five years of protracted litigation only made fleeting reference to the Fourteenth Amendment in its Motion for Modification of Decision and for Rehearing, again is a statement that is not conducive to the facts.

Following the oral arguments made during the trial of the case, the trial court requested all parties to submit written memoranda of law to support their arguments, prior to rendering its decision. In their memoranda of law Petitioner stated:

> "Likewise, the Defendants cannot contend that to put the Plaintiff back in the position he would have been, the Defendants have only to pay a 'fair market value' of the property at the time of their breach. Such a measure of damages is contrary to the rules of *Hadley v. Baxendale, supra,* and *Abbott v. Gatch, supra,* and is not allowable as not having been within the contemplation of the parties. Whether this so-called 'fair market value' would be higher or lower than that contemplated would be immaterial. The governing factor under Maryland Law is the value that was contemplated.

A so-called 'fair market value' is provided for in condemnation cases, *Eminent Domain*, Art. 33A, Sec. 6 of the *Annotated Code of Maryland*, 1957, with Supplements. However, only the state or its duly authorized agencies may acquire private property against the will of the landowner and only the state can force a person to accept a so-called 'fair market value' for his land. That this right and the so-called 'fair market value' rule as a meaure of damages does not extend to private individuals is clearly shown in *Lichtenberg v. Sachs*, 1957, 213 Md. 147 at 152 and in *Easter v. Dundalk Holding Co.*, 1952, 199 Md. 303 at 307. In the *Easter* case, the plaintiff who had knowingly and willfully encroached on his neighbor's property, applied to the court for an order allowing him to pay the defendant a fair market value for the property taken. In the *Lichtenberg* case, the plaintiff who had knowingly and willfully blocked the defendant's right-of-way, applied for an order requiring the defendant to accept another right-of-way. In both cases, the court held that even a court of equity cannot require a landowner who was an innocent party to accept a fair market value for the wrongful taking of his property, stating:

> 'For a taking of one's property for the private use of another even with just compensation, is a deprivation of property without due process of law in violation of Art. 23 of the Maryland Declaration of Rights and of the Fourteenth Amendment of the Constitution of the United States'.

Whether a defendant wrongfully took another's property for his own use, or wrongfully caused another to lose his property, is immaterial. Under the rule of contract and of tort, one who has caused a loss of another's property is liable for all losses consequent to his wrongdoing and cannot merely offer a restitution on the basis of a supposed 'fair market value' at the time of the wrong. Certainly the wrongdoer cannot be allowed to hire appraisers to establish a so-called 'fair market value' so as to acquire another's

property who is not willing to sell, or so as to establish the damages for his wrongdoing. Such would open wide the doors to all manner of fraudulent actions, which doors had been firmly closed in the *Lichtenberg* and *Easter* cases."

Respondent having submitted its memoranda of law, Petitioner in its Reply Memoranda of Law again stated:

"The Defendants cannot now attempt to avoid or minimize the damages which they caused the Plaintiff and with which they are faced, by using this foreclosure 'sale' price as a yardstick of the value of the Plaintiff's property. This 'sale' was wrongfully caused by the Defendants. Nor can the Defendants, who had wrongfully caused the loss of the Plaintiff's property, attempt by their expert witnesses, to set a so-called 'fair market value' on the Plaintiffs' property, so as to minimize or avoid their liability. In *Easter v. Dundalk Holding Co.*, 1952, 199 Md. 303, and in *Lichtenberg v. Sachs*, 1957, 213 Md. 137, the plaintiffs had wrongfully and knowingly encroached on the defendants properties, and had erected buildings on them. Having done so the plaintiffs went into an Equity Court and attempted to force the plaintiffs to accept a 'fair market value' in one case and in the other to accept another right-of-way. The Court in each case held that even a Court of Equity cannot require a landowner who was an innocent party to accept a 'fair market value' for the wrongful taking of his property. Whether a defendant wrongfully took another's property, or as in the subject case, wrongfully caused another to lose his property, is immaterial".

In their Brief submitted to the Court of Appeals of Maryland, your Petitioners again raised the same constitutional question where they stated:

"In *Lichtenberg v. Sachs*, 1957, 213 Md. 147, 152, and in *Easter v. Dundalk Holding Co.*, 1952, 199 Md. 303, 307, the Court held that neither a wrongdoer nor an Equity Court can force an injured party to accept a

> "fair market value' for his property 'as such would be a deprivation of property without due process of law in violation of Art. 23 of the Maryland Declaration of Rights, and of the Fourteenth Amendment of the Constitution of the United States'. Whether a person wrongfully took another's property or wrongfully caused another to lose his property is immaterial. The wrongdoer cannot force the injured party to accept an arbitrarily established 'fair market value' for his property.
>
> "In addition, only the State or its duly authorized agencies under the *Right of Eminent Domain, Maryland Annotated Code,* 1957, as amended, Article 33A, Sec. 6, may force a landowner to accept a 'fair market value' for his property."

As admitted by Respondent, this question was again raised by Petitioner in its Motion for Modification of Decision and for Rehearing.

III. Here Respondent stated that measuring damages by "fair market value" at time of breach is not a taking of property without due process of law. To support their statement Respondent gave two arguments.

The first was that the Petitioner had urged the Court, "to hold its Constitutional measure of damages should be based on a speculative value placed on the building three years prior to its construction". Petitioner submits that the value placed on the property by Manufacturers at the time the contract was made, $7,920,000, was not a speculative value. Whether this value was too high or too low is immaterial. It was this value that formed the basis of the contract between St. Paul and Manufacturers. It was based on their valuation of $7,920,000, that Manufacturers made a 66% mortgage commitment of $4,800,000. It is submitted that no insurance company such as Respondent could or would make a commitment of this size based on a specula-

tive value or on a value to be determined on date of completion unless as stated by Petitioner in their ~~Petition~~ Brief, Manufacturers was secretly and fraudulently intending to breach their contract after Petitioner had spent millions of dollars, should in the opinion of Manufacturers it be to their advantage to do so.

Respondent's second argument was that, "Petitioner's attack on the 'fair market value' standard of measuring damages is unfounded, for this Court has on numerous occasions approved the use of that formula in a Constitutional context". To support their statement, Respondent cited *United States v. Virginia Electric Power Co.*, 365 U.S. 624 (1962); *United States ex rel. Tennessee Valley Authority v. Powelson*, 319 U.S. 266 (1943); *United States v. Miller*, 317 U.S. 369 (1943).

Not one of the above cases cited by the Respondent dealt with breach of contract. They all dealt with condemnation and damages to be awarded under condemnation. A "fair market value" at date of taking is the accepted standard for establishing an award in condemnation cases. These cases cited by Respondent merely emphasize that there is a different rule followed in establishing an award in condemnation cases from the rule establishing damages in breach of contract actions.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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